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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

PRUCO SECURITIES,  
CORPORATION, a New Jersey  
Corporation,

Plaintiff,

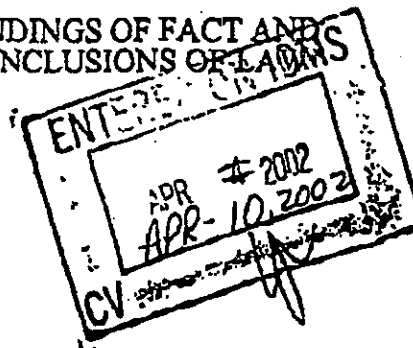
v.

LINDA ARANA, Executor of the  
Estate of Her Late Father, Theodore  
Lockrem, Deceased,

Defendant.

CV-01-02881 WMB (SHx)

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW



The above-titled action was tried before the Court on March 5, 6, and 7, 2002.  
Having heard the testimony of the witnesses and reviewed the exhibits admitted into  
evidence, as well as considering all the papers and argument of counsel, the Court makes  
the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. This action involves a dispute between defendant Linda Arana ("Arana"),  
as executor of the estate of Theodore Lockrem ("Lockrem"), and plaintiffs Pruco

SECURITIES CORPORATION ("Pruco") and Gail Spicuzza ("Spicuzza") over whether the

National Association of Securities Dealers, Inc. ("NASD") has subject matter jurisdiction

CLSD

EXHIBIT "A"

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1 to resolve an underlying dispute between them and compel arbitration in The Estate of  
2 Ted Lockrem v. Pruco Securities, Inc. et al., NASD-DR No. 00-02354.

3 2. Pruco is a member of the National Association of Securities Dealers, Inc.  
4 ("NASD"). Defendant Gail Spicuzza ("Spicuzza") was, at all relevant times, a registered  
5 representative of Pruco and an "associated person" within the meaning of Rule 10301 of  
6 the NASD Code of Arbitration Procedure.

7 3. In late 1996, Lockrem, a retired widower, traveled to Kauai, Hawaii. On  
8 this trip, he met Spicuzza through mutual acquaintances and a close friendship developed.  
9 Lockrem eventually moved into Spicuzza's home in Kauai.

10 4. On October 8, 1997, Lockrem committed suicide at Spicuzza's home, and  
11 left a suicide note, which stated that: "[T]he straw that broke the camel's back is that the  
12 woman who I'm in love with is unable to return the love that I have for her, and I fully  
13 understand why."

14 5. From January 1997 through July 1997, Lockrem paid \$97,024.05 to G.E  
15 Capital of Hawaii, Inc. towards Spicuzza's home mortgage.

16 6. On July 18, 1997, soon after he moved to Kauai, Lockrem opened an  
17 account at the Kauai Community Federal Credit Union ("Kauai Credit Union"). Lockrem  
18 deposited an escrow check from the sale of his home in Arizona for \$109,751 into the  
19 account. Gail Spicuzza was named as a joint signatory on the account, which permitted  
20 her to withdraw funds.

21 7. The same day as opening the Kauai Credit Union account, Spicuzza and  
22 Lockrem jointly withdrew \$20,000 in travelers' checks, which Spicuzza used to invest in  
23 stocks and options through the brokerage house Securities Services Network, where she  
24 held an account with stockbroker Justin Jensen.

25 8. Spicuzza also invested \$14,500.00 of her own funds in said Securities  
26 Services Network account.

27 9. On July 22, 1997, \$10,000 was withdrawn from the Kauai Credit Union  
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1 account to pay Spicuzza's VISA bill.

2 10. On July 23, 1997, \$10,000 was disbursed from the Kauai Credit Union  
3 account to Spicuzza's account at B.B. Graham brokerage.

4 11. On July 28, 1997, \$4,300.00 was wired out of the Kauai Credit Union  
5 account to Ala Wai Yacht Brokerage.

6 12. On July 31, 1997, \$30,000 was disbursed from the Kauai Credit Union  
7 account to Spicuzza's account at Securities Services Network.

8 13. On August 13, 1997, \$34,240.63 was transferred to Spicuzza's checking  
9 account, which was then deposited into Spicuzza's accounts at E.D. & F. Mann  
10 International, Inc. and Prudential Securities.

11 14. All together, Spicuzza invested \$92,000 from the Kauai Credit Union  
12 account in various stocks and options purchased and sold through Securities Services  
13 Network, B.B. Graham & Co., E.D. & F. Mann International, Inc., and Prudential  
14 Securities, Inc.

15 15. All of the investments at issue were made in Spicuzza's name alone,  
16 through registered representatives of the other companies.

17 16. Lockrem kept a detailed record of all of the above transactions in a file  
18 titled "KCFCU" on his personal computer. The file, which bore the heading "Kauai  
19 Community Federal Credit Union Record of Deposits and Disbursements" included a  
20 complete list of how much was invested at each brokerage, as well as a complete list of  
21 personal expenses paid out of the account.

22 17. Spicuzza, Lockrem and Justin Jensen, a registered representative of  
23 Securities Services Network, had a telephone conference regarding Spicuzza's account at  
24 Securities Services Network. During this conversation, Spicuzza asked Jensen to explain  
25 the investments to Lockrem

26 18. Sometime in July, August or September 1997, prior to Lockrem's death,  
27 Spicuzza invited Peggy and Joe Watson to dinner at her house. Peggy Watson testified  
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1 that Spicuzza invited her and her husband in order to discuss Spicuzza's investments of  
2 Lockrem's funds in the stock market and to explain those investments to the Watsons.

3 19. On October 8, 1997, the day of Lockrem's death by suicide, Spicuzza was  
4 interviewed by two Kauai police officers.

5 20. Spicuzza was first interviewed by Officer Daniel Finney of the Kauai  
6 police, the assistant responding officer. The interview took place in Lockrem's bedroom,  
7 located in Spicuzza's home, at 10:00 a.m. on October 8, 1997. Spicuzza told Officer  
8 Finney that she first met Lockrem through associates and Kauai residents Joe and Peggy  
9 Watson, whom he was visiting at that time. She stated that Lockrem was considering  
10 selling his home in Arizona and retiring to Kauai. She said that they kept in touch, and  
11 when he sold his home and came out to Kauai he proposed just giving her the proceeds  
12 from his home sale to pay off the mortgage to her house, and he would just live  
13 downstairs. She said that she advised him that rather than do that and have nothing left,  
14 he could live downstairs, she could invest the money for him in a number funds and  
15 stocks that they could share, that he would get his money back and have a place to live,  
16 and she would be able to pay off her mortgage. Spicuzza told Finney that this was the  
17 arrangement under which they resided together.

18 21. Finney testified that sometime in 2001, Spicuzza called him on the  
19 telephone and expressed concern with the wording of the police report he filed. Spicuzza  
20 was concerned that Finney thought she was someone who would take advantage of  
21 someone like Lockrem. Spicuzza was also concerned that Officer Finney had misheard  
22 her statements about the arrangement under which they lived together. Spicuzza did not  
23 ask him to change the report but insisted that it was inaccurate.

24 22. At 11:35 a.m. on October 8, 1997, Spicuzza was interviewed by Detective  
25 Sheldon of the Kauai police department. Spicuzza told Sheldon that Lockrem visited  
26 Kauai and revealed that he wanted to sell his property in Arizona and retire in Kauai. She  
27 stated that he did return after selling his home in Arizona and that she accepted him living  
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1 to Spicuzza.

2 32. After Lockrem's death, Lockrem received a check by mail from the  
3 National Bank of Arizona in the approximate amount of \$2,100 made payable to him.  
4 Spicuzza subsequently deposited the check into the Kauai Credit Union joint account.  
5 After the check cleared, the funds were later transferred to her personal account.

6 33. The Kauai Credit Union sued Spicuzza in Small Claims Court and received  
7 a default judgment in its favor against Spicuzza for \$2,100.

8 34. Any Conclusion of Law deemed to be a Finding of Fact is hereby  
9 incorporated into these Findings of Fact.

10  
11 CONCLUSIONS OF LAW

12 1. Any Finding of Fact deemed to be a Conclusion of Law is hereby  
13 incorporated into these Conclusions of Law.

14 2. The Court has jurisdiction over the parties and over this action pursuant to  
15 28 U.S.C. § 1332.

16 3. NASD Rule 10301(a) provides that "any dispute, claim, or controversy . . .  
17 between a customer and a member and/or associated person arising in connection with the  
18 business of such a member or in connection with the activities of such associated person  
19 shall be arbitrated under this Code . . . upon demand of the customer."

20 4. It is well established that federal policy favors enforcing valid agreements  
21 to arbitrate disputes. See Moses H. Cone Memorial Hospital v. Mercury Construction  
22 Corp., 460 U.S. 1, 24 (1983); see also Shearson/American Express, Inc. v. McMahon, 482  
23 U.S. 220, 226 (1987).

24 5. The Supreme Court has stated that "any doubts concerning the scope of  
25 arbitrable issues should be resolved in favor of arbitration." Id. at 24-25.

26 6. Courts have broadly interpreted the meaning of a "customer" as defined  
27 within the context of Rule 10301(a). Vestax Securities Corp. v. McWood, 116 F.

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1 Supp.2d 865, 869 (E.D. Mich. 2000) (citing WMA Securities, Inc. v. Ruppert, 80 F.  
2 Supp.2d 786, 789 (S.D. Ohio 1999) (citing Lehman Brothers, Inc. v. Certified Reporting  
3 Co., 939 F. Supp. 1333, 1340 (N.D. Ill. 1995)).

4 7. The term 'customer' refers to either the member's or the associated person's  
5 customer. John Hancock Life v. Wilson, 254 F.3d 48, 58-59. (2<sup>nd</sup> Cir. 2001). See also  
6 Vestax Securities Corp v. Skillman, 117 F. Supp.2d 654, 657 (N.D. Ohio 2000) (by  
7 conducting business with plaintiff's registered representative, defendants conducted  
8 business with plaintiff and became its customers).

9 8. "No federal appellate court has prohibited the customer of an associated  
10 person, asserting a claim arising out of the associated person's business, from compelling  
11 a member to arbitrate under Rule 10301." John Hancock Life v. Wilson, 254 F.3d 48, 59  
12 (2<sup>nd</sup> Cir. 2001). See also Vestax Securities Corp. v. McWood, 2202 FED App. 0057P (6<sup>th</sup>  
13 Cir. February 14, 2002)("[A]n agent or representative of a financial services firm is an  
14 'associated person' under NASD Rule 10301(a) such that a relationship with the agent  
15 entitles the investor to the arbitration process.)

16 9. The fact that the "customer" never opened accounts with the NASD-  
17 member firm is irrelevant. Vestax Securities Corp v. Skillman, 117 F. Supp.2d 654, 657  
18 (N.D. Ohio 2000)

19 10. A customer includes individuals who maintained an "informal business  
20 relationship with a representative of an NASD member." Vestax Securities Corp. v.  
21 McWood, 116 F. Supp.2d 865, 869 (E.D. Mich. 2000) (citing WMA Securities, Inc. v.  
22 Ruppert, 80 F. Supp.2d 786, 789 (S.D. Ohio 1999) (citing Lehman Brothers, Inc. v.  
23 Certified Reporting Co., 939 F. Supp. 1333, 1340 (N.D. Ill. 1995)).

24 11. The dispute between plaintiff Arana and defendants Pruco Securities and  
25 Spicuzza arises in connection with Spicuzza's business activities.

26 12. Lockrem was Spicuzza's "customer" within the meaning of NASD Rule  
27 10301(a).

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1 13. Therefore, the underlying dispute is subject to binding arbitration before the  
2 NASD.

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4 JUDGMENT & ORDER

5 It is hereby ORDERED and ADJUDGED that the National Association of  
6 Securities Dealers, Inc. has subject matter jurisdiction to resolve the underlying dispute  
7 and compel arbitration between defendant Linda Arana, as executor of the estate of  
8 Theodore Lockrem, and plaintiffs Pruco Securities Corporation and Gail Spicuzza in the  
9 arbitration The Estate of Ted Lockrem v. Pruco Securities, Inc. et al., NASD-DR No.  
10 00-02354. The preliminary injunction imposed by this Court is lifted, and finally,  
11 plaintiff Pruco Securities shall bear defendant Linda Arana's costs pursuant to Federal  
12 Rule of Civil Procedure 54(d).

13  
14 IT IS SO ORDERED.

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16 Dated: April 3, 2002

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19 Wm. Matthew Byrne, Jr.  
20 United States District Judge  
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